

PREM114D03458

August 2014

Minister for Finance
Hon Tom Koutsantonis
GPO Box 2264
ADELAIDE SA 5001

Dear Minister

**Reform of South Australian Boards and Committees
Parliamentary Superannuation Board**

As you are aware, the Presiding Member of the South Australian Superannuation Board recently received a letter from the Premier regarding his decision to reform South Australian government boards and committees. He was asked to make a submission as to whether the Parliamentary Superannuation Board (Board) has an essential functional purpose, or whether it should be abolished and replaced by an alternative structure. The matter was referred to me as a member of the Board.

By way of background, the Board is a statutory trustee established under the *Parliamentary Superannuation Act 1974* (Act) for the purpose of administering the Parliamentary Superannuation Scheme (Scheme). This Scheme provides benefit payments to persons who have served as members of Parliament.

The Parliament has delegated full powers to the Board in that it is responsible to the Minister for Finance for the administration of the Act, other than the investment and management of the fund (the responsibility for which is charged to Funds SA). The Board utilises the services of the Department of Treasury and Finance to administer the Scheme.

The Board is commercially focused and operates to deliver competitive superannuation benefits to members, notwithstanding that membership in the schemes that it governs is effectively mandated by legislation. In doing so, it carries out a number of essential functions, including strategic direction, administration (through a service provider relationship with Treasury and Finance), review and decision, reporting and fiduciary control.

I believe there is a strong argument that the Board should continue to exist in its current form to ensure the independence of decisions in the governance of the Parliamentary Superannuation Scheme in accordance with Commonwealth superannuation laws. The Board also operates efficiently and cost effectively and there is no duplication in the functions performed by another entity. It is also important to note that any alternative structure would still require a representative board, the composition of which would be costly due to the need to replace the collective knowledge and experience of the current Board. As requested, further criteria relevant to retaining the Board in its current form are set out in the template below.

20 8 14
MF IN 14 D00337
MF IN 14 /0061

**Parliamentary
Superannuation
Scheme**

GPO Box 48
Adelaide SA 5001

151 Pirie Street
Adelaide SA 5000

Tel: (08) 8226 9839
Fax: (08) 8226 9826

In conclusion, in reviewing the need for the Board and its operation I believe it operates independently, in the best interests of members and in compliance with required legislation and regulations. The Board is actively engaged in all aspects of its duties and responsibilities and there is no evident benefit or improvement to be had in abolishing or merging the Board.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R Wortley', with a long horizontal flourish extending to the right.

Hon Russell Wortley MLC
MEMBER, PARLIAMENTRY SUPERANNUATION BOARD

Section of report	Comment
Board/Committee name	Parliamentary Superannuation Board (Board)
Minister	Minister Koutsantonis
Portfolio	Minister for Finance
Who is coordinating advice to the minister?	Super SA
How is the board or committee constituted?	Legislation
What is the function of the board or committee?	Decision Making
Board or committee funding	External Government Funded
Minister's interim recommendation	Exempt
If recommended to be exempt, provide justification	<p>Criteria 1 :is the operation of the entity truly commercial in nature:</p> <p>Yes, the Board is commercially focused operating to deliver competitive super benefits to members.</p> <p>(i) has there been a full delegation of powers</p> <p>Yes, the Board is responsible to the Minister for all aspects of administration (other than investments). The Crown Solicitor's Office has previously advised (in the context of the South Australian Superannuation Board) that this does not entail an obligation on the Board to follow directions of the Minister, but rather, involves being answerable to the Minister in an accountability sense. This is necessary under Commonwealth superannuation law, which prohibits trustees from being subject to directions from third parties.</p> <p>(ii) does the entity meet the standard definition of a public non-financial corporation or a public financial corporation?</p> <p>No – the Board is not referenced as one of these bodies in the 2014-15 State Budget, Budget Paper 3.</p> <p>Criteria 2: Is there are case for direct community or sectoral representation through a board</p> <p>As per the <i>Parliamentary Superannuation Act 1974</i>, the Board consists of the following members:</p> <ul style="list-style-type: none"> • the President for the time being of the Legislative Council • the Speaker for the time being of the House of Assembly • a person appointed by the Governor on the nomination of the Treasurer. <p>While there are no requirements under the Act with respect to the qualifications of the members of the Board, Cabinet takes these issues into consideration when recommending appointments to the Governor. In fact Government appointed member has extensive qualifications and experience in the superannuation and/or financial fields, which is necessary to satisfy Commonwealth prudential standards on the "fitness and propriety" of superannuation trustees. For these reasons, the Board's collective experience in the administration of the Parliamentary</p>

Section of report	Comment
	<p>Superannuation Scheme is crucial and thus superior to other options.</p> <p>Criteria 3: Will the abolition of the board have a negative impact on business or community confidence</p> <p>Yes, this would have a negative impact on member confidence in the administration of the superannuation schemes of which their membership is compulsory. That is, a superannuation fund is a trust structure by which the trustee (ie the Board) holds property on trust for the beneficiaries (members). The members effectively turn over their rights and proprietary interest in their superannuation to the trustee, separating ownership of the funds and control from its equitable ownership. As part of a superannuation trust, employers have an obligation to contribute to the relevant superannuation fund in accordance with Commonwealth legislation and the legislation governing the state schemes.</p> <p>Having regard to the fundamental structure of a superannuation trust, if the Board is abolished and its trustee obligations are delegated to state government departments/employees:</p> <ol style="list-style-type: none"> 1. the necessary independence between the trustee and the employer will be lost, and the current transparency, impartiality and accountability between the stakeholders will become blurred, if not non-existent; 2. the employer could have a conflict of interest, in that it will be the same body charged with both administering the fund, and making financial contributions to it. <p>It is anticipated that this would impact significantly on member confidence in terms of the administration of the fund.</p> <p>Criteria 4: Is there a significant legal or financial advantage in retaining the Board</p> <p>There are both significant legal and financial advantages in retaining the Board. In terms of legal requirements:</p> <ol style="list-style-type: none"> 1. The Board has a legislated mandated responsibility to administer the government's superannuation schemes and therefore there is a justified on-going need for its continuation. 2. The State is subject to obligations under the Heads of Government Agreement between the Commonwealth and the States/Territories. The Commonwealth recognises pursuant to this document that circumstances surrounding public sector schemes warrant exemption from strict/technical compliance with Commonwealth superannuation legislation, and in return, the States and Territories agree that relevant schemes will "conform with the principles of the Commonwealth's retirement incomes policy to the best of their endeavours". This includes an obligation to comply with trustee governance arrangements consistent with Commonwealth superannuation legislation. 3. Trustees of superannuation funds must act in accordance with the legislation/trust deed governing the fund, complex Commonwealth superannuation and corporation laws, stringent Commonwealth Prudential Standards (including "fit and proper person" requirements) and other legislation impacting on the conduct of the fund and trustee (such as tax legislation, family law etc). This includes the requirement to exercise a reasonable degree of care and diligence that a superannuation entity director would exercise in the corporate trustee's circumstances.

Section of report	Comment
	<p>4. Trustees of superannuation funds must act in the best interests of members in accordance with the general law concerning trusts and trusts, including the requirement to act in the best interests of beneficiaries and avoid conflicts of interest.</p> <p>These points indicate that there are significant obligations on superannuation trustees which are specific in nature, which do not fall into the realm of expertise and experience of persons outside the Board's structure (eg government employees).</p> <p>In terms of financial obligations, there would be significant cost implications of dissolving the Board and entrusting these trustee duties to government employees or other third parties suitably qualified to carry out the role of superannuation trustee. Currently, none of the Board members are remunerated. The Board also promotes efficiency and there is no duplication in the functions performed by another entity.</p>
Implementation status: Will the recommended outcome be achieved by 30 October?	Green: On track for 30 October 2014
Future or alternative arrangements	The current activities of, and requirement for, the Board should continue in its existing form, to ensure industry standards of member representation, compliance with Commonwealth superannuation laws and regulations, and independent consideration of the administration of the Parliamentary Superannuation Scheme.

